

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DONALD MESSINA,	)	
	)	2:09cv598
Plaintiff,	)	Electronic Filing
	)	
v.	)	Judge Cercone
	)	Magistrate Judge Lenihan
CLARION COUNTY CORRECTIONS, et al	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM ORDER**

AND NOW, this 6<sup>th</sup> day of July, 2010, after de novo review of the record and upon due consideration of [31] the magistrate judge's report and recommendation filed on April 12, 2010, and [34] plaintiff's objections thereto, **IT IS ORDERED** that [34] plaintiff's objections be, and the same hereby are, overruled and [18] the Defendants' Motion to Dismiss be, and the same hereby is, granted. The report and recommendation as augmented herein is adopted as the opinion of the court.

Plaintiff's objections are without merit and fail to address the principal reason why plaintiff is barred from proceeding with his claim against defendants: the filing of a state court action does not toll the statute of limitations for a case filed in federal court. See Falsetti v. Local Union No. 2026, United Mine Workers of America, 355 F.2d 658, 662 (3d Cir. 1966) (An action in state court does not toll the running of the statute of limitations against subsequent action in federal court.). Plaintiff's complaint facially demonstrates that his action is untimely as a matter of law.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

Pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure if he so desires.

s/ David Stewart Cercone  
David Stewart Cercone  
United States District Judge

cc: Honorable Lisa Pupo Lenihan  
United States Magistrate Judge

Donald Messina  
GG-0082  
SCI Dallas  
1000 Follies Road  
Dallas, PA 18612-0286

Michael R. Lettrich, Esquire  
Meyer Darragh Buckler Bebenek & Eck  
Suite 4850, U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219